

Application No. 10/803,859
Amendment dated May 17, 2005
Reply to Office Action of April 8, 2005

REMARKS/ARGUMENTS

Claim Rejections - 35 USC § 112

Applicant has canceled claim 7. Accordingly, the rejection under 35 U.S.C. § 112 should be withdrawn.

Claim Rejections - 35 USC § 103

Applicant requests reconsideration of the rejection under 35 U.S.C. § 103. Applicant would maintain that the rejection is hindsight reconstruction of applicant's invention. The rejection arrives at applicant's invention by manipulating the disclosure in the prior art reference in a way that is not suggested by the prior art. Any such modification of this reference must be suggested by the prior art.

Responding to the Examiner's Office Action, it is maintained that Klier does not disclose a composition that includes at least 60% solvent, as claimed by applicant. At column 3, lines 40-47, Klier indicates:

In the single phase oil continuous microemulsions, the water is in an amount greater than 40 percent by weight and less than 75 percent by weight based on the total weight of the microemulsion. Preferably, the microemulsion contains greater than 45 weight percent water. Preferably, the microemulsions contain less than 70 weight percent water, more preferably less than 65 weight percent and even more preferably less than 60 weight percent. (emphasis added)

Application No. 10/803,859
Amendment dated May 17, 2005
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Thus, the Klier reference directs one clearly to greater than 45 weight percent water and less than 60 weight percent water. (My previous response was apparently in error, referring to at least 60 percent water.) Applicant's invention requires greater than 60% solvent. This is not taught by Klier.

Going further, however, Klier clearly says the solvent concentration is less than 60 weight percent water (see column 3, line 62, to column 4, line 3). The preferred weight percent of solvent is 25 to 50 weight percent. Accordingly, there is nothing in Klier that would suggest or make it obvious to have 60 percent solvent, when it specifically says the concentration of the solvent is less than 60 percent.

The Examiner has indicated that applicant has argued that its solvent blend contains no volatile organic compounds, but that this is not persuasive because it is not commensurate in scope with the instantly claimed invention. It is well known that one does not have to set forth the advantages of the invention in the claims. The different solvents are themselves not considered to be volatile organic compounds according to the definition set forth in the specification. Therefore, this advantage of the present invention must be considered. There is no suggestion in Klier to pick and choose the appropriate solvents to arrive at applicant's invention. The Klier reference does not discuss volatile organic compounds.

Application No. 10/803,859
Amendment dated May 17, 2005
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With respect to the glycol ether, there is some confusion with respect to the disclosure in the Klier reference. At column 5, lines 43-46, it states:

The alkylene glycol monoether is present in the emulsions containing 70-80 percent water in an amount greater than 5 weight percent based on the total weight of the emulsion, and less than 15 percent.

Of course, prior to that, it references less than 50 weight percent, but it also indicates that the "in general the ratio of glycol ether to total surfactants should be greater than 2 to 1 in both microemulsions and emulsions." Since applicant's composition has no surfactants, there is no guidance on how much glycol ether to add to the formula. Without hindsight reconstruction, one cannot choose the appropriate amount of glycol ether.

Finally, the Examiner indicated that the examples do not show the criticality of the combination because the no VOC blend is no different than a d-limonene. Applicant would request the Examiner to reconsider this. D-limonene is a volatile organic compound. Therefore, to match the performance of d-limonene is an unexpected result and shows the criticality of the combination.

CONCLUSION

In light of the above, applicant maintains that the rejection is improper and respectfully requests the allowance of the pending claims.

Application No. 10/803,859
Amendment dated May 17, 2005
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This Amendment does not introduce any new issued and is intended purely to simplify matters for purposes of appeal. Accordingly, applicant would request that this Amendment be entered.

Respectfully submitted,

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